



**U.S. Citizenship
and Immigration
Services**

**Non-Precedent Decision of the
Administrative Appeals Office**

In Re: 34186177

Date: NOV. 15, 2024

Appeal of Nebraska Service Center Decision

Form I-140, Immigrant Petition for Alien Workers (Extraordinary Ability)

The Petitioner, a martial arts instructor, seeks classification as an individual of extraordinary ability. *See* Immigration and Nationality Act (the Act) section 203(b)(1)(A), 8 U.S.C. § 1153(b)(1)(A). This first preference classification makes immigrant visas available to those who can demonstrate their extraordinary ability through sustained national or international acclaim and whose achievements have been recognized in their field through extensive documentation.

The Director of the Nebraska Service Center denied the petition, concluding that the record did not establish that the Petitioner had satisfied at least three of ten initial evidentiary criteria, as required. The matter is now before us on appeal under 8 C.F.R. § 103.3.

The Petitioner bears the burden of proof to demonstrate eligibility by a preponderance of the evidence. *Matter of Chawathe*, 25 I&N Dec. 369, 375-76 (AAO 2010). We review the questions in this matter de novo. *Matter of Christo's, Inc.*, 26 I&N Dec. 537, 537 n.2 (AAO 2015). Upon de novo review, we will dismiss the appeal.

I. LAW

Section 203(b)(1)(A) of the Act makes immigrant visas available to individuals with extraordinary ability in the sciences, arts, education, business, or athletics which has been demonstrated by sustained national or international acclaim and whose achievements have been recognized in the field through extensive documentation. These individuals must seek to enter the United States to continue work in the area of extraordinary ability, and their entry into the United States will substantially benefit the United States. The term “extraordinary ability” refers only to those individuals in “that small percentage who have risen to the very top of the field of endeavor.” 8 C.F.R. § 204.5(h)(2). The implementing regulation at 8 C.F.R. § 204.5(h)(3) sets forth a multi-part analysis. First, a petitioner can demonstrate international recognition of their achievements in the field through a one-time achievement in the form of a major, internationally recognized award. Or the petitioner can submit evidence that meets at least three of the ten criteria listed at 8 C.F.R. § 204.5(h)(3)(i)–(x), including items such as awards, published material in certain media, and scholarly articles. If those standards do not readily apply to the individual’s occupation, then the regulation at 8 C.F.R. § 204.5(h)(4) allows the submission of comparable evidence.

Once a petitioner has met the initial evidence requirements, the next step is a final merits determination, in which we assess whether the record shows sustained national or international acclaim and demonstrates that the individual is among the small percentage at the very top of the field of endeavor. *See Kazarian v. USCIS*, 596 F.3d 1115 (9th Cir. 2010) (discussing a two-part review where the documentation is first counted and then, if fulfilling the required number of criteria, considered in the context of a final merits determination); *see also Visinscaia v. Beers*, 4 F. Supp. 3d 126, 131-32 (D.D.C. 2013); *Rijal v. USCIS*, 772 F. Supp. 2d 1339 (W.D. Wash. 2011).

II. ANALYSIS

The Petitioner earned a bachelor's degree in physical education in Brazil in 2014. The Petitioner has spent most of his time since September 2018 in the United States as an F-1 nonimmigrant student, although his résumé does not identify any U.S. institution where he has studied. The Petitioner's résumé indicates that he taught martial arts in Brazil from January 2017 to August 2018, and has worked two jobs since entering the United States: as a massage therapist since June 2019 and as a Brazilian Jiu Jitsu instructor since December 2019.

Because the Petitioner has not indicated or shown that he received a major, internationally recognized award, he must satisfy at least three of the alternate regulatory criteria at 8 C.F.R. § 204.5(h)(3)(i)–(x). The Petitioner claims to have satisfied three of these criteria, summarized below:

- (ii), Membership in associations that require outstanding achievements;
- (iii), Published material about the individual in professional or major media; and
- (viii), Leading or critical role for distinguished organizations or establishments.

The Director concluded that the Petitioner had not shown that he meets any of the claimed criteria.

Upon review of the record, we agree with the Director that the Petitioner has not satisfied at least three criteria, as required.

Documentation of the alien's membership in associations in the field for which classification is sought, which require outstanding achievements of their members, as judged by recognized national or international experts in their disciplines or fields.
8 C.F.R. § 204.5(h)(3)(ii).

The Petitioner submitted a photograph of his black belt certification from the United States Federation of Brazilian Jiu Jitsu (USFBJJ), dated 2011. The Petitioner provided biographical information about the USFBJJ's founder, copied from a web printout in the record, but did not provide any information about the requirements to join the USFBJJ.

In the denial notice, the Director stated that the Petitioner had not established that membership in the USFBJJ “requires outstanding achievements as an essential condition of their members for admission as judged by recognized national or international experts in their disciplines or fields.”

On appeal, the Petitioner repeats the previously submitted information about the USFBJJ's founder. Details about the life and career history of the organization's founder do not establish that the USFBJJ is an association in the field, or that it requires outstanding achievements of its members, as judged by recognized national or international experts in their disciplines or fields.

The Petitioner has not overcome or directly addressed the Director's stated grounds for concluding that the Petitioner has not satisfied the requirements of the criterion.

Also on appeal, the Petitioner also makes a new claim of membership in the International Brazilian Jiu Jitsu Federation (IBJJF), stating: "On June 23, 2024, [he] received the IBJJF Certificate of Achievement for being approved in a[n] IBJJF Rules Webinar." The Petitioner does not establish the IBJJF's membership requirements. Therefore, the Petitioner has not shown that this membership satisfies the regulatory requirements.

The date of the newly claimed certificate raises another issue. The Petitioner filed the petition in July 2023. The June 2024 certificate dates from nearly a year after the filing date, and more than a month after the Director denied the petition on May 13, 2024. The Petitioner must establish that he met all eligibility requirements as of the filing date. *See* 8 C.F.R. § 103.2(b)(1). *See also Matter of Katigbak*, 14 I&N Dec. 45, 49 (Reg'l Comm'r 1971) (holding that a petition cannot properly be approved based on qualifications that a beneficiary did not yet hold at the time of filing). The Petitioner does not explain how this new certificate establishes that he was eligible for the classification sought in July 2023.

We agree with the Director that the Petitioner has not satisfied the regulatory requirements of the criterion.

Because the Petitioner has claimed to satisfy only three criteria under 8 C.F.R. § 204.5(h)(3), and has not satisfied the requirements of one of those claimed criteria, he cannot satisfy the minimum of three of those criteria. Detailed discussion of the remaining criteria, relating to published materials and leading or critical roles, cannot change the outcome of this appeal. Therefore, we reserve discussion on these two criteria.¹

III. CONCLUSION

The Petitioner has not submitted the required initial evidence of either a one-time achievement or documents that meet at least three of the ten lesser criteria. As a result, we need not provide the type of final merits determination referenced in *Kazarian*, 596 F.3d at 1119-20. Nevertheless, we advise that we have reviewed the record in the aggregate, concluding that it does not support a conclusion that the Petitioner has established the acclaim and recognition required for the classification sought.

The Petitioner seeks a highly restrictive visa classification, intended for individuals already at the top of their respective fields, rather than for individuals progressing toward the top. U.S. Citizenship and Immigration Services has long held that even athletes performing at the major league level do not automatically meet the "extraordinary ability" standard. *Matter of Price*, 20 I&N Dec. 953, 954 (Assoc. Comm'r 1994). Here, the Petitioner has submitted letters indicating that he has been involved

¹ *See INS v. Bagamashad*, 429 U.S. 24, 25-26 (1976) (stating that, like courts, federal agencies are not generally required to make findings and decisions unnecessary to the results they reach); *see also Matter of L-A-C-*, 26 I&N Dec. 516, 526 n.7 (BIA 2015) (declining to reach alternative issues on appeal where an applicant is otherwise ineligible).

with well-known teams and has trained successful athletes. Most of the documentation in the record concerns individuals and organizations with which the Petitioner has been associated in various ways. These materials do not directly relate to the Petitioner and do not satisfy the statutory requirement for “extensive documentation” of recognition of the Petitioner’s achievements. *See* section 203(b)(1)(A) of the Act.

The Petitioner has not documented recognition rising to the level of sustained national or international acclaim and demonstrating a “career of acclaimed work in the field” as contemplated by Congress. H.R. Rep. No. 101-723, 59 (Sept. 19, 1990). Moreover, the record does not otherwise demonstrate that the Petitioner is one of the small percentage who has risen to the very top of the field of endeavor. *See* section 203(b)(1)(A) of the Act and 8 C.F.R. § 204.5(h)(2).

The Petitioner has not demonstrated eligibility as an individual of extraordinary ability. We will therefore dismiss the appeal.

ORDER: The appeal is dismissed.